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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/544,218	06/12/2006	Pascal Crepel	03715.0149-00000	9486
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FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413				
EXAMINER				
BADR, HAMID R				
ART UNIT		PAPER NUMBER		
1794				
MAIL DATE		DELIVERY MODE		
04/13/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/544,218

Applicant(s)

CREPEL ET AL.

Examiner

HAMID R. BADR

Art Unit

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 June 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SF/ICE)
- Paper No(s)/Mail Date 11/16/2005
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date ____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____

DETAILED ACTION

Claim Objections

Claim 6 is objected to for missing the term "in". An "in" is missing after "claimed" in the first line. Correction is required.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-3, 6-10 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Amen et al. (WO 89/02702; hereinafter R1).
3. R1 discloses the incorporation of cream into fermented yogurt product which can have added flavorings. R1 discloses that pasteurized cream, flavoring agents and coloring agents can be added to the fermented yogurt. R1 further teaches that for acceptable product stability, the fat content of the product should be in the range of 8-11% by weight based on the total weight of the finished product. (page 9, lines 19-33).
4. R1 also discloses a formulation wherein cream is added to a fermented yogurt. The finished products are made in vanilla and strawberry flavorings. R1 discloses the mixing of cream into the yogurt bulk. Flavorings are then mixed into the yogurt containing cream. (Page 11-12, Example 1)

5. Given that a fermented yoghurt is mixed with cream, the particle diameter of free fat globules and those of the protein-fat mixed network, as presently claimed, will be inherent in the product so formed.

6. Claims 1-2 are rejected under 35 U.S.C. 102(b) as being anticipated by Van Dijk et al. (GB 1,476,309; hereinafter R2).

7. R2 discloses a process in which cream is admixed with an acidified milk product and whipped to produce a whipped topping. (page 1, col. 1, line 31 to col. 2, line 59).

8. R2 discloses a formulation where yogurt is mixed with cream to make a whipped topping. (Page 2, Example 2).

9. R2 teaches that additional sugar, flavors and other additives can be incorporated into the mixture. (page 2, col. 1, lines 15-18).

10. Given that cream and yogurt are mixed to make the final product, the particle diameter for the free fat globules and protein-fat globules as presently claimed will be inherent in the finished product.

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 4-5, and 11 rejected under 35 U.S.C. 103(a) as being unpatentable over (WO 89/02702; hereinafter R1).

13. The disclosure by R1 is hereby incorporated by reference as outlined in paragraphs 3-5 above.

14. While R1 is silent regarding a chocolate flavored product or a vanilla flavored product containing chocolate chips, given that R1 discloses the incorporation of flavoring agents into the product, it is obvious to those of skill in the art that flavors such as chocolate flavor on its own or vanilla flavor and chocolate chips can be added to the formulations disclosed by R1.

15. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to modify the yogurt product of R1 by adding either chocolate flavor or vanilla flavor containing chocolate chips to the product. One would do so to make various flavors of a base mix. Absent any evidence to contrary and based on the teachings of the cited reference, there would be a reasonable expectation of success in making a yogurt product containing added cream in various flavors.

16. Claims 3-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Van Dijk et al. (GB 1,476,309; hereinafter R2).

17. The disclosure by R2 is hereby incorporated by reference as outlined in paragraphs 7-9.

18. R2 is silent regarding the flavorings as presently claimed.

19. Given that R2 discloses the addition of flavors of choice, it would be obvious to those of skill to incorporate flavors as presently claimed.

20. While the cream and yogurt proportions as disclosed by R2 are slightly different from cream and yogurt proportions as presently claimed, since varying the cream and yogurt proportions would result in different overruns (as disclosed by R2), different whipping properties, different flavors, and different caloric values, one would be motivated to changes those proportions for any of the mentioned reasons. Consequently, the cream and yogurt proportions as presently claimed can be manipulated by those of skill in the art.

21. Given that R2 teaches the mixing steps for various formulations, mixing in-tank and in-line as presently claimed would be obvious to those of skill in the art.

22. A yogurt product comprising cream and fermented yogurt as disclosed by R2 can be made with various flavorings. Therefore, it would have been obvious to one of ordinary skill in the art to modify the teachings of R2 by changing the cream and yogurt proportions in the formulations and incorporate various flavorings to make the yogurt of the instant invention. One would do so to take advantage of a variety of products regarding flavor, texture, whipping properties, and caloric value. Absent any evidence to contrary and based on the teachings of the cited reference, there would be a reasonable expectation of success in making a bimodal yogurt of different flavors as presently claimed.

Conclusion

23. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US 4,163,802. discloses a process wherein a yogurt base is

mixed with cream to make a base to which various flavoring can be added. WO 00/19831 discloses yogurt products of various flavors including vanilla and chocolate flavors. JP 11-276067 (machine translation) discloses yogurt products of low syneresis due to fat globules in a defined range.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to HAMID R. BADR whose telephone number is (571)270-3455. The examiner can normally be reached on M-F, 8:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571) 272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Hamid R Badr
Examiner
Art Unit 1794

/KEITH D. HENDRICKS/
Supervisory Patent Examiner, Art Unit 1794